

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Dr. Hortense Lucinda Harrison)	
)	
)	
Complainant,)	
v.)	Case No. GC-2008-0041
)	
Laclede Gas Company,)	
Respondent.)	

**MOTION TO STRIKE PORTIONS OF PUBLIC COUNSEL’S
SUPPLEMENTAL BRIEF**

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and, for its Motion to Strike Portions of the Supplemental Brief filed in this case by the Office of the Public Counsel (“Public Counsel”), states as follows:

1. On October 1, 2008, Public Counsel filed its Supplemental Brief in this case. There are at least two instances in that Brief where Public Counsel seeks to introduce new evidence after the close of the evidentiary hearing in this case. As discussed below, the Commission should strike these portions of Public Counsel’s Supplemental Brief because their inclusion violates Commission Rule 4 CSR 240-2.110(8) which requires anyone seeking to introduce to such evidence to file a petition and obtain Commission approval to reopen the evidentiary record.¹ In the alternative, the Commission should accept Laclede’s corrections to these assertions as presented herein.

2. The first instance occurs at the top of page 3 of the Supplemental Brief wherein Public Counsel cites the Laclede tariff provision which allows the Company to

¹Ironically, Public Counsel is not only seeking to introduce new evidence after the close of the *second* evidentiary hearing held in this case, but is doing so on issues that were raised by Public Counsel for the first time after the close of the first evidentiary hearing in this case, which issues were outside of the approved Issues List, thereby necessitating a second hearing. At some point, there needs to be a modicum of respect paid to the procedures for conducting hearings and introducing evidence, including the deadlines for doing so.

estimate bills when a meter has stopped or failed to register. *See* P.S.C. Mo. No. 5 Consolidated, Fifth Revised Sheet No. R-8 (hereinafter Sheet No. R-8). After citing this provision, Public Counsel goes on to claim that Tariff Sheet No. R-8 “. . . was added to Laclede’s tariff long before the invention of AMR, and therefore, it was clearly not the Commission’s intention to include AMR transmissions in the Commission’s definition of a registering meter.” Public Counsel fails, however, to cite anything from the record to support the claim that AMR was invented after this tariff provision went into effect. That’s because there is nothing in the record that even purports to address when AMR was “invented” in relation to when Tariff Sheet No. R-8 became effective. The Commission should accordingly strike this sentence.

3. In the alternative, Laclede requests that the Commission take notice of the fact that Tariff Sheet R-8 became effective in 1997, along with the fact that, contrary to Public Counsel’s claim, Laclede has had various kinds of automatic or remote meter reading devices on its system for more than three decades. The Commission’s August 21, 1992 Report and Order in Laclede’s 1992 general rate case proceeding is just one example of where Laclede’s longstanding use of these devices has been acknowledged in the Commission’s official case files. *See Re: Laclede Gas Company*, Case No. GR-92-165, Report and Order issued August 21, 1992 (in which the Commission discusses proposed tariff modifications pertaining to the Company’s Trace Remote Meter Reading devices). *See also: USW Local 11-6 vs. Laclede Gas Company*, Case No. GC-2006-0060, Report and Order issued November 6, 2006 (in which the Commission recognized at page 3 that remote meter reading devices had been in use for decades). In short, Public Counsel’s factual assertion on this matter is not only improper but incorrect.

4. The second instance can be found in the last paragraph of page 3 of the Supplemental Brief. There, Public Counsel cites the caption heading of a proceeding (Case No. GT-2008-0374) that Laclede had initiated to make changes to Tariff Sheet No. R-8. Because that caption heading contains the words “In the Matter of the Laclede Gas Company Tariff Filing to Allow Estimated Billing Whenever an Automatic Meter Reader Fails to Send Readings of Actual Usage,” Public Counsel portrays it as evidence that “Laclede appears to acknowledge that its tariff does not allow estimated billing when the AMR fails, and has attempted to correct that “defect” through a tariff change.” Once again, Public Counsel fails to cite any evidence from the record to substantiate its contention, and its assertion to that effect should therefore be stricken.

5. In the alternative, Laclede requests that the Commission take notice of the fact that the caption heading cited by Public Counsel as evidence of *Laclede’s* views on this issue was not written by Laclede or even by the Commission. Instead, the caption heading was authored by *Public Counsel itself* when it filed a Motion to Suspend Laclede’s Tariff Filing in Case No. GT-2008-0374. From the outset, Laclede disputed the accuracy and propriety of Public Counsel’s caption heading, even going so far as to incorporate a different and, in Laclede’s view, more accurate caption heading in subsequent pleadings,² and to specifically object to Public Counsel’s wording during the

²“In the Matter of the Laclede Gas Company Tariff Filing to Establish Additional Procedures For Situations Where a Meter Stops or Fails to Register or Provide Meter Readings.” As Laclede’s caption heading in Case No. GT-2008-0374 makes clear, the purpose of the Company’s tariff filing in that case was to establish *additional procedures* for those instances where a meter had stopped or was not providing readings, not to supplement the circumstances where estimates may be billed or change the definition of what constitutes a failure of the device. That is precisely why the tariff filing itself proposed to add, for the first time, customer notice requirements, operational response times and other procedures for those situations where estimates are being used because a meter was no longer working in its intended fashion. In short, these tariff revisions were a proactive attempt to better define the Company’s service obligations under such circumstances. Public Counsel should be welcoming such initiatives rather than trying to gain an inappropriate advantage from them in cases like this one.

on-the-record portion of the prehearing conference in Case No. GT-2008-0374. As a consequence, while Public Counsel's citation of this case might provide good fodder for a Paul Harvey "Now You Know the Rest of the Story" radio segment, it signifies nothing in terms of Laclede's views on this subject. In summary, Public Counsel first created a caption heading that inaccurately described a Laclede tariff filing, and then used that caption heading in its Supplemental Brief in this case to infer that Laclede has conceded Public Counsel's position, even though Public Counsel knew that Laclede expressly *disputed* both the case heading and the position itself.

WHEREFORE, Laclede respectfully moves that the Commission strike those portions of Public Counsel's Supplemental Brief described above or, in the alternative, take into consideration the matters offered by Laclede in response thereto.

Respectfully submitted,

/s/ Rick Zucker

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Complainant, the General Counsel of the Staff of the Missouri Public Service Commission, and the Office of Public Counsel on this 10th day of October, 2008, by United States mail, hand-delivery, email, or facsimile.

/s/Gerry Lynch